

LEAVE TO REMOVE

One of the most challenging situations that can arise after a separation or divorce is where one parent wants or needs to move abroad with their child, and the other parent does not or cannot move to the same country

I PLAN TO MOVE ABROAD: HOW DO I PREPARE?

If you are separated or divorced and want to move abroad permanently with your children, you must obtain written consent from the other parent or permission from the court via a leave to remove or relocation application. If you take your child without the consent of the other parent, you will have “abducted” the child, which can result in proceedings both in this country and the country to which you take your child. It can also result in criminal proceedings.

It is best to seek early legal advice. It is vital to consider all the practicalities of life for you and the child in the new country. A court will want to know about your plans, which you will have to set out in a detailed statement. You will need to cover information such as:

- Geography - where will you live and why?
- Education - where will your child go to school – think timing, when will it be least disruptive to move to a new school?
- Health – what are the healthcare arrangements in the new country, and how will you cover this?
- Finances - how will you financially support yourself and your child? Where will you work and what are your family plans in the new country?
- Family – what are your plans for how your child will see and keep in contact with the other parent and wider family who remain in this country
- Support – what are the details of your support network abroad after the proposed move
- Immigration - are you able to satisfy immigration requirements? These should be put in hand before any court application is made.
- What it would mean for you if you were stopped from going

Your family solicitor will assist you with preparing your statement and may also want to obtain statements from other family members who have a close involvement with the children.

MY EX PLANS TO MOVE ABROAD: HOW DO I OBJECT?

If your former spouse or partner has made an application to relocate your children to another country and you want to

object, you will need to explain to the court why you disagree, setting out the details in a statement. You will need to cover things such as:

- the current contact you have with the children and how this will be affected by a move overseas
- practical difficulties in contact if the children are allowed to move
- any problems you can see with the proposed living or educational arrangements for the children
- the wishes of the children as you understand them, and
- the effect on you of a move

Your solicitor will assist you with preparing your statement and may also want to obtain statements from other family members, who have a close involvement with the children, and oppose the move.

THE COURT'S APPROACH

The Judge hearing the case will consider a checklist of factors before reaching a decision. The court's paramount consideration will be the welfare of the child.

To assess whether the move is in the child's best interests, the judge will consider:

- the wishes and feelings of the children concerned, bearing in mind each child's age and understanding
- the children's physical, emotional and educational needs
- the likely effect on the children of the change
- the children's age, sex, background and relevant characteristics
- the risk of the children suffering harm, and
- how capable each parent is of meeting the child's needs

The judge will consider how permission or refusal to relocate will affect the parents and the children and whether their wish to relocate and opposition to it is genuine.

The judge may well be assisted in reaching a conclusion by a report from the Children and Family Court Advisory Support Service (Cafcass) or an Independent Social Worker (ISW).

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.